

33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper

Energy Commission staff has drafted this concept paper to explore the issues underlying the regulations specifying procedures for enforcement of the renewable portfolio standard (RPS) for publicly owned electric utilities (POUs). Staff has provided a list of options for each issue, as well as staff recommendations where they exist. Staff requests that stakeholders respond to staff recommendations, supplying rationale for those areas in which the stakeholder disagrees with staff's opinion. Staff also requests that stakeholders provide their own recommendations where no staff recommendation exists and list additional issues and/or options they feel should be considered by the Energy Commission in drafting the regulations. In contributing these additional recommendations, issues and/or options, stakeholders should include an explanation as to why the Energy Commission should consider them.

Foundational Issues

- a) Meaning of “consistent with” and “in the same manner as” (Public Utilities Code Sections 399.30 (c)(3), 399.30 (d) (1), 399.30 (d) (2), 399.30 (d)(3))
 - i) Options:
 - (1) Always same as those for retail sellers
 - (2) In spirit of rules for retail sellers; up to POUs and Energy Commission to define for specific cases
 - (3) Some rules the same as those for retail sellers (for instance, definitions of portfolio content categories), and some in the spirit of the rules for retail sellers, as determined by POUs and the Energy Commission
 - ii) Staff recommendation: Option (3); the law should be applied to all entities using the same rules to the extent practicable. In areas in which different rules apply to POUs, those rules will be as consistent as possible with those for retail sellers. (In response to this particular issue, staff requests that stakeholders specify which rules should be the same for POUs and retail sellers and what criteria should be used to determine “in the spirit of.” Please include rationale.)

Eligibility of resources

- i) Pre-June 1, 2010, contracts approved by POU under former Public Utilities Code 387 (Public Utilities Code Sections 399.12 (e)(1)(C))
- ii) Options:
 - (1) Resources must meet Energy Commission's eligibility rules at time of contract execution
 - (2) Resources must meet the definition of renewable electric generation facility in Public Resources Code Section 25741
 - (3) Resources must meet the Energy Commission's eligibility requirements applicable at the time the facility applies for RPS certification.

iii) Staff recommendation: Option (3).

Classification of procurement products

a) Portfolio content categories

- i) Portfolio Content Category 1 – interconnected or scheduled to a California balancing authority (Public Utilities Code Sections 399.16 (b)(1), 399.16 (c)(1) and 399.30 (c)(3))

(1) Definition:

(a) Options (one or more of the following):

- (i) Generation from a facility that has its first point of interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California balancing authority) is automatically considered eligible, even if it is procured as an unbundled product or is unbundled after procurement
- (ii) Generation from a facility that has its first point of interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California balancing authority) is only considered eligible if it is procured as and remains a bundled product
- (iii) Generation from a facility that has its first point of interconnection with a California balancing authority (or with distribution facilities used to serve end users within a California balancing authority) is only considered eligible if it is procured as a bundled product, even if it is subsequently unbundled
- (iv) Generation scheduled into a California balancing authority is considered eligible if it is procured as a bundled product, even if it is subsequently unbundled
- (v) Generation scheduled into a California balancing authority is considered eligible only if it is procured as and remains a bundled product
- (vi) Generation dynamically transferred into a California balancing authority is considered eligible only if it is procured as a bundled product, even if it is subsequently unbundled
- (vii) Generation dynamically transferred into a California balancing authority is considered eligible only if it is procured as and remains a bundled product

(b) Staff recommendation: None at this time

- (2) Minimum percentage of reduction of procurement content requirement, upon successful application by POU, applied to this category (Public Utilities Code Sections 399.16 (e) and 399.30 (c)(3))

(a) Compliance period ending December 31, 2013

(i) Options:

1. Not less than 40%
 2. Not less than 33%
 3. Not less than 25%
 4. No defined limit; decided on a case-by-case basis
 - (ii) Staff recommendation: Option 4; no limit is specified for this compliance period in statute; the Energy Commission will review each application on its merits and determine the appropriate reduction, if any.
- (b) Compliance period ending December 31, 2016
- (i) Options:
 1. Not less than 50%
 2. Not less than 40%
 3. Not less than 33%
 4. No defined limit; decided on a case-by-case basis
 - (ii) Staff recommendation: Option 4; no limit is specified for this compliance period in statute; the Energy Commission will review each application on its merits and determine the appropriate reduction, if any.
- (3) Determination that generation belongs in this category
- (a) Options (one or more of the following):
 - (i) POU indicates which generation it believes belongs in this category as part of compliance reporting
 - (ii) Staff determination at request of POU
 - (iii) Committee determination at request of POU
 - (iv) Commission determination at request of POU
 - (v) At end of compliance period as part of compliance and verification by staff, approved by Commission
 - (b) Staff recommendation: Option (i), (v); these options will allow for the minimum administrative burden and backlog of essential work.
- ii) Portfolio Content Category 2 – firmed and shaped incremental (Public Utilities Code Sections 399.16 (b)(2), 399.16 (c)(3) and 399.30 (c)(3))
- (1) Definition:
- (a) Location of renewable resource interconnection:
 - (i) Options:
 1. May or may not be interconnected to a California balancing authority
 2. Not interconnected to a California balancing authority
 - (ii) Staff recommendation: None at this time
 - (b) Timing of incremental electricity resource scheduling into California balancing authority (scheduling may not precede generation of renewable product)
 - (i) Options:

1. Within one month of generation
 2. Within same calendar year as generation
 3. Within 12 months of generation
 4. Within same compliance period as generation
 5. Within 36 months of generation
 - (ii) Staff recommendation: None at this time
- (c) Renewable resource
- (i) Options:
 1. Intermittent resources only
 2. Both intermittent and non-intermittent resources permitted
 - (ii) Staff recommendation: None at this time
- (d) Incremental resource
- (i) Options:
 1. Incremental to California
 2. Incremental to POU
 - (ii) Staff recommendation: None at this time
- (e) Location of incremental resource relative to renewable resource
- (i) Options:
 1. Must be within same balancing authority
 2. May or may not be within same balancing authority
 - (ii) Staff recommendation: None at this time
- (f) Execution of incremental resource contract
- (i) Options:
 1. Must occur at the same time or after renewable resource contract is executed
 2. May occur before, at the same time, or after renewable resource contract is executed
 - (ii) Staff recommendation: None at this time
- (g) Contractual relationship between renewable and incremental resources
- (i) Options:
 1. Clear relationship must exist in contract for the renewable and/or incremental resource in order for the generation to count toward this category
 2. No contractual relationship necessary
 - (ii) Staff recommendation: None at this time
- (2) Determination that generation belongs in this category
- (a) Options (one or more of the following):
 - (i) POU indicates which generation it believes belongs in this category as part of compliance reporting

- (ii) Staff determination at request of POU
 - (iii) Committee determination at request of POU
 - (iv) Commission determination at request of POU
 - (v) At end of compliance period as part of compliance and verification by staff, approved by Commission
 - (b) Staff recommendation: Option (i), (v); these options will allow for the minimum administrative burden and backlog of essential work.
- iii) Portfolio Content Category 3 – all other, including unbundled renewable energy credits (Public Utilities Code Sections 399.16 (b)(3), 399.16 (c)(2) and 399.30 (c)(3))
- (1) Definition:
 - (a) Options:
 - (i) All unbundled renewable energy credits and any other generation that does not qualify for portfolio content category 1 or 2
 - (ii) Any generation that does not qualify for portfolio content category 1 or 2
 - (b) Staff recommendation: None at this time
 - (2) Determination that generation belongs in this category
 - (a) Options (one or more of the following):
 - (i) POU indicates which generation it believes belongs in this category as part of compliance reporting
 - (ii) Staff determination at request of POU
 - (iii) Committee determination at request of POU
 - (iv) Commission determination at request of POU
 - (v) At end of compliance period as part of compliance and verification by staff, approved by Commission
 - (b) Staff recommendation: Option (i), (v); these options will allow for the minimum administrative burden and backlog of essential work.

Compliance and verification

- a) Verification process
 - i) Options:
 - (1) Include POU verification as part of current RPS Verification Report; full report will be sent to both CPUC and ARB
 - (a) Adopt annually
 - (b) Adopt at end of each compliance period, posting annual procurement data in each intervening year
 - (2) POUs have a separate verification report
 - (a) Adopt annually
 - (b) Adopt at end of each compliance period, posting annual procurement data in each intervening year
 - ii) Staff recommendation: Option (2)(b); Verification of POU and IOU compliance should take place under separate reports, so that a complication in verifying

information from one group will not needlessly delay the timely verification of the other. As compliance can only be determined at the end of each compliance period, staff recommends only adopting a verification report after each period. For years when a report is not adopted, annual procurement data will be posted to allow tracking of progress toward RPS targets. An annual workshop could be held to publicly discuss findings.

b) Non-compliance triggers

- i) Options (one or more of the following):
 - (1) Does not meet procurement target requiring the utility to procure a minimum quantity of eligible renewable energy resources for a compliance period, without a demonstration of conditions beyond the control of the POU that would delay timely compliance
 - (2) Does not meet portfolio content category required minimum or maximum percentages for a compliance period, without a demonstration of conditions beyond the control of the POU that would delay timely compliance
 - (3) Not timely filing sufficient documentation for the Energy Commission to determine POU compliance with the law at the end of a compliance period, without successful application for a late filing
 - (a) More than 30 days late
 - (b) More than 60 days late
 - (c) More than 90 days late
 - (d) Not submitted
 - (e) Other
 - (4) One or more required annual reports is not received in a timely manner
 - (a) More than 30 days late
 - (b) More than 60 days late
 - (c) More than 90 days late
 - (d) Not submitted
 - (e) Other
 - (5) Procurement plan is adopted late
 - (6) Does not provide adequate documentation to demonstrate that conditions exist beyond the control of the POU that would delay timely compliance, and that reasonable measures were taken to overcome those conditions
- ii) Staff recommendation: Options (1), (2), (3)(c), (3)(d), (6); the law clearly sets targets for each compliance period and minimum and maximum percentages for each portfolio content category. Additionally, the Energy Commission will need to timely determine each POU's status in achieving the goals of the RPS targets for each compliance period and will rely on reports and documentation submitted by the POUs for those compliance years.

c) Criteria and process for determining whether POUs have met procurement requirements

- i) Procurement targets for each compliance period
 - (1) Process used to determine POU compliance
 - (a) Options:
 - (i) Same process as that used for retail sellers
 - (ii) Same process, but require POUs to procure renewable resources for the remaining unmet need after long-term contracts executed after June 1, 2010, are removed, up to the total number of kWhs that represents the percentage of total retail sales required for that compliance period
 - (b) Staff recommendation: None at this time
 - (2) Time period used to determine compliance for compliance period ending December 31, 2016 (Public Utilities Code Section 399.30 (c)(2))
 - (a) Options:
 - (i) January 1, 2016 to December 31, 2016
 - (ii) January 1, 2014 to December 31, 2016
 - (iii) Other time period
 - (b) Staff recommendation: None at this time
 - (3) Time period used to determine compliance for compliance period ending December 31, 2020 (Public Utilities Code Section 399.30 (c)(2))
 - (a) Options:
 - (i) January 1, 2020 to December 31, 2020
 - (ii) January 1, 2017 to December 31, 2020
 - (iii) Other time period
 - (b) Staff recommendation: None at this time
- ii) Percentage limitations for portfolio content categories
 - (1) Portfolio content category 1 (Public Utilities Code Sections 399.16 (b)(1), 399.16 (c)(1) and 399.30 (c)(3))
 - (a) Options (one or more of the following):
 - (i) Use contract information, which could demonstrate, as necessary depending on the portfolio content category definition, scheduling for the renewable resource and whether generation in this category is procured as a bundled product
 - (ii) Use NERC e-Tags to verify generation scheduled into a California balancing authority; the NERC e-Tag must show that the generation came from the same RPS-eligible resource as the RECs with which the NERC e-Tag is matched
 - (iii) Use dynamic transfer agreements to verify generation dynamically transferred to a California balancing authority
 - (b) Staff recommendation: Options (i), (ii), (iii); contract information would provide appropriate assurance, as needed, that generation counted toward

this category is scheduled into a California balancing authority and/or bundled. NERC e-Tags adequately demonstrate the timing and quantity of generation scheduled into a California balancing authority from the renewable resource. Dynamic transfer agreements with the balancing authority sufficiently demonstrate that the generation represented belongs in this category.

(2) Portfolio content category 2 (Public Utilities Code Sections 399.16 (b)(2), 399.16 (c)(3) and 399.30 (c)(3))

(a) Firmed and shaped:

(i) Options (one or more of the following):

1. Use contract information to demonstrate, as necessary depending on the portfolio content category definition, scheduling for the renewable and incremental resources and/or a contractual link between the renewable resource and the incremental resource
2. Use NERC e-Tags to verify firmed and shaped generation scheduled into a California balancing authority; NERC e-Tags must include the RPS ID # of the resource with which the NERC e-Tag is matched

(ii) Staff recommendation: Options 1, 2; contract information would provide appropriate assurance, as needed, that generation counted toward this category is scheduled into a California balancing authority and/or demonstrates a contractual connection. NERC e-Tags adequately demonstrate the timing and quantity of generation scheduled into a California balancing authority and can show a link to the RPS-eligible resource via the RPS ID#.

(b) Incremental:

(i) Options:

1. Contract information to demonstrate, as necessary, the timing of contract execution for and/or the contractual relationship between the renewable and incremental resources

(ii) Staff recommendation: Option 1; contractual information should be adequate to demonstrate the incremental nature of the generation that is used to firm and shape renewable generation.

(3) Portfolio content category 3 (Public Utilities Code Sections 399.16 (b)(3), 399.16 (c)(2) and 399.30 (c)(3))

(a) Options:

(i) Any generation that does not qualify for the first two categories is automatically counted in this category

(ii) All unbundled renewable energy credits, regardless of whether the renewable resource has its first point of interconnection with a California balancing authority, automatically count toward this category

(b) Staff recommendation: None at this time

- iii) Reasonable progress in intervening years of each compliance period (Public Utilities Code Section 399.30 (c)(2))
 - (1) Options (one or more of the following):
 - (a) Summarize how POU define their own reasonable progress without opinion
 - (b) Define reasonable progress in the regulations as a percentage
 - (c) Define the process and criteria in the regulations used to determine reasonable progress for POU
 - (d) Release verified data
 - (i) Adopted by full Commission
 - (ii) Not adopted by full Commission
 - (e) Release unverified data
 - (i) Adopted by full Commission
 - (ii) Not adopted by full Commission
 - (2) Staff recommendation: Options (c), (e)(ii); statute limits the authority to mandate demonstration of specific quantities of procurement for intervening years. If a reasonable process was identified in regulations for POU to follow in achieving their ultimate RPS achievement goals at the end of each compliance period, the Energy Commission could release unverified data submitted in the POU's annual reports to serve as a snapshot of POU progress in intervening years.
- iv) Deficits associated with a previous renewables portfolio standard (Public Utilities Code Section 399.15 (a))
 - (1) Options:
 - (a) No deficits shall be applied to future compliance periods if a POU procured at least 14 percent of retail sales from renewable energy resources in 2010 (from 399.15 (a))
 - (b) No deficits shall be applied to future compliance periods if a POU procured at least 10 percent of retail sales from renewable energy resources in 2010
 - (c) No deficits shall be applied to future compliance periods regardless of the percentage of retail sales procured from renewable energy resources in 2010
 - (2) Staff recommendation: None at this time
- v) Excess procurement from previous compliance periods (Public Utilities Code Sections 399.13 (a)(4)(B) and 399.30 (d)(1))
 - (1) When can excess procurement begin to be applied to future compliance periods, for those POU that adopt rules permitting the use of excess procurement?
 - (a) Options:
 - (i) January 1, 2011 (date provided in 399.13(a)(4)(B))
 - (ii) June 1, 2010
 - (iii) Another date
 - (iv) At the discretion of POU

- (b) Staff recommendation: Option (i); staff can see no compelling reason to apply a different standard from that applying to retail sellers.
- (2) Can excess procurement from portfolio content category 3 be applied toward a future compliance period, for those POU's that adopt rules permitting the use of excess procurement?
 - (a) Options:
 - (i) Yes
 - (ii) No (from 399.13 (a)(4)(B))
 - (b) Staff recommendation: Option (ii); staff can see no compelling reason to apply a different standard from that applying to retail sellers.
- (3) Length of contracts allowed for excess procurement that can be applied to a future compliance period, for those POU's that adopt rules permitting the use of excess procurement?
 - (a) Options:
 - (i) At least 10 years (from 399.13(a)(4)(B))
 - (ii) At least 5 years
 - (iii) At least 3 years
 - (iv) At the discretion of POU's
 - (b) Staff recommendation: Option (iv); as contracts remain under the purview of POU's and are not approved by the Energy Commission, it is reasonable to leave this issue to the discretion of POU's.

d) Conditions allowing waiver of enforcement

- i) Reasonable conditions that allow for delay of timely compliance (including inadequate transmission, unanticipated curtailment of resources, and permitting, interconnection or other circumstances that delay procurement), for those POU's that adopt such conditions (Public Utilities Code Sections 399.15 (b)(5)-399.15 (b)(9) and 399.30 (d)(2))
 - (1) Options (one or more of the following):
 - (a) Use the same criteria for timely compliance delays as those used for retail sellers
 - (b) Establish criteria in regulations by which Energy Commission will determine reasonableness of timely compliance delays; Energy Commission will use these criteria to evaluate at the end of each compliance period for those POU's that do not meet targets
 - (c) Tiered compliance based on size of POU
 - (d) Exemption from demonstrating compliance for POU's under a certain size
 - (2) Staff recommendation: Option (b); while the criteria for evaluating the reasonableness of timely compliance delays should be similar for retail sellers and POU's, there may be different considerations that need to be taken into account, requiring slight disparities. In addition, no language in the statute

indicates that exemptions or variations in the rules are necessary for smaller POU's.

- ii) Reasonable conditions that allow procurement expenditures to meet or exceed cost limitations, for those POU's that adopt such conditions (Public Utilities Code Sections 399.15 (c) and 399.30 (d)(3))

- (1) Options:

- (a) Use the same criteria for cost limitations as those used for retail sellers
 - (b) Establish criteria in regulations by which Energy Commission will determine reasonableness of cost limitations; Energy Commission will use these criteria to evaluate at the end of each compliance period for those POU's that do not meet targets

- (2) Staff recommendation: Option (b); while the criteria for evaluating the reasonableness of exceeding cost limitations should be similar for retail sellers and POU's, there may be different considerations that need to be taken into account, requiring slight disparities.

e) Dispute resolution process

- i) If POU's dispute Energy Commission findings

- (1) Options:

- (a) Same process currently used for retail sellers that dispute Energy Commission findings
 - (b) Different process from that used for retail sellers

- (2) Staff recommendation: Option (a); staff can see no compelling reason to adopt a different process from that applying to retail sellers.

- ii) If another party disputes Energy Commission findings

- (1) Options:

- (a) Same process outlined in the Renewable Energy Program Overall Program Guidebook
 - (b) Different process from that outlined in the Renewable Energy Program Overall Program Guidebook

- (2) Staff recommendation: Option (a); staff can see no compelling reason to adopt a different process from that presented in the RPS Guidebook.

Reporting

a) Regulatory streamlining

- i) Options (one or more of the following):

- (1) Modify existing forms submitted to the Energy Commission by POU's to reflect reporting requirements imposed by SB X1 2

- (2) Allow consolidated/aggregated reports at the discretion of POUs; those whose reports are aggregated by another party must submit an attestation verifying that all of the information representing their POU is correct and complete
 - (3) Do not allow consolidation of reports
- ii) Staff recommendation: Options (1), (2); staff feels that reporting should be streamlined in any possible way, including aggregated reports and modifications to existing reports already submitted to the Energy Commission.